

AMENDED IN ASSEMBLY APRIL 6, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 265

Introduced by Assembly Member Ammiano

February 7, 2011

An act to amend Section ~~1161~~ 1179 of the Code of Civil Procedure, relating to tenancies.

LEGISLATIVE COUNSEL'S DIGEST

AB 265, as amended, Ammiano. Tenancies: unlawful detainer.

Existing law specifies that a tenant is guilty of unlawful detainer upon default in the payment of rent under the lease after receipt of 3 days' notice of that violation and failure to correct it. *Existing law authorizes the court to relieve a tenant against the forfeiture of a lease or rental agreement in case of hardship, and also grants a court the discretion to relieve any person against forfeiture on its own motion.*

This bill would ~~increase the time of the notice period from 3 to 14 days~~ require a court to relieve a tenant against the forfeiture of a lease or rental agreement if the tenant pays the amount of rent in arrears, the amount of any subsequent rent that has become due, and the reasonable costs of the proceedings.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1179 of the Code of Civil Procedure is
2 amended to read:

1 1179. (a) The court may relieve a tenant against a forfeiture
2 of a lease or rental agreement, whether written or oral, and whether
3 or not the tenancy has terminated, and restore ~~him or her~~ *the tenant*
4 to his or her former estate or tenancy, in case of hardship, as
5 provided in Section 1174. The court has the discretion to relieve
6 any person against forfeiture on its own motion.

7 ~~An~~

8 (b) *An* application for relief against forfeiture may be made at
9 any time prior to restoration of the premises to the landlord. The
10 application may be made by a tenant or subtenant, or a mortgagee
11 of the term, or any person interested in the continuance of the term.
12 ~~It must~~ *Notice shall* be made upon petition, setting forth the facts
13 upon which the relief is sought, and *shall* be verified by the
14 applicant. Notice of the application, with a copy of the petition,
15 ~~must shall~~ be served at least five days prior to the hearing on the
16 plaintiff in the judgment, who may appear and contest the
17 application. Alternatively, a person appearing without an attorney
18 may make the application orally, if the plaintiff either is present
19 and has an opportunity to contest the application, or has been given
20 ex parte notice of the hearing and the purpose of the oral
21 application. In no case shall the application or motion be granted
22 except on condition that full payment of rent due, or full
23 performance of conditions or covenants stipulated, so far as the
24 same is practicable, be made.

25 (c) (1) *In addition to any discretionary relief from forfeiture*
26 *available under this chapter, in cases of eviction for nonpayment*
27 *of rent of a residential tenant who is being evicted from his or her*
28 *principal place of residence, the court shall relieve the tenant*
29 *against a forfeiture of a lease or rental agreement, whether written*
30 *or oral, and whether or not the tenancy has terminated, and restore*
31 *the tenant to his or her former estate or tenancy, if the tenant pays*
32 *the following into the court for the landlord:*

33 (A) *The amount of rent in arrears, as specified in the three days'*
34 *written notice requiring payment of rent.*

35 (B) *Any subsequent rent that has become due.*

36 (C) *The reasonable costs of the proceedings.*

37 (2) *For purposes of this subdivision, "reasonable costs of the*
38 *proceedings" shall include reasonable attorney's fees. However,*
39 *attorney's fees shall not exceed three hundred fifty dollars (\$350)*

1 *if the tenant has paid the amounts specified in this subdivision*
2 *prior to the commencement of trial.*

3 (3) *An application for relief under this subdivision may be made*
4 *at any time prior to the restoration of the premises to the landlord.*

5 SECTION 1. Section 1161 of the Code of Civil Procedure, as
6 amended by Section 5 of Chapter 244 of the Statutes of 2009, is
7 amended to read:

8 1161. A tenant of real property, for a term less than life, or the
9 executor or administrator of his or her estate heretofore qualified
10 and now acting or hereafter to be qualified and act, is guilty of
11 unlawful detainer:

12 1. ~~When he or she continues in possession, in person or by~~
13 ~~subtenant, of the property, or any part thereof, after the expiration~~
14 ~~of the term for which it is let to him or her; provided the expiration~~
15 ~~is of a nondefault nature however brought about without the~~
16 ~~permission of his or her landlord, or the successor in estate of his~~
17 ~~or her landlord, if applicable; including the case where the person~~
18 ~~to be removed became the occupant of the premises as a servant,~~
19 ~~employee, agent, or licensee and the relation of master and servant,~~
20 ~~or employer and employee, or principal and agent, or licensor and~~
21 ~~licensee, has been lawfully terminated or the time fixed for~~
22 ~~occupancy by the agreement between the parties has expired; but~~
23 ~~nothing in this subdivision shall be construed as preventing the~~
24 ~~removal of the occupant in any other lawful manner; but in case~~
25 ~~of a tenancy at will, it must first be terminated by notice, as~~
26 ~~prescribed in the Civil Code.~~

27 2. ~~When he or she continues in possession, in person or by~~
28 ~~subtenant, without the permission of his or her landlord, or the~~
29 ~~successor in estate of his or her landlord, if applicable, after default~~
30 ~~in the payment of rent, pursuant to the lease or agreement under~~
31 ~~which the property is held, and 14 days' notice, in writing,~~
32 ~~requiring its payment, stating the amount which is due, the name,~~
33 ~~telephone number, and address of the person to whom the rent~~
34 ~~payment shall be made, and, if payment may be made personally,~~
35 ~~the usual days and hours that person will be available to receive~~
36 ~~the payment (provided that, if the address does not allow for~~
37 ~~personal delivery, then it shall be conclusively presumed that upon~~
38 ~~the mailing of any rent or notice to the owner by the tenant to the~~
39 ~~name and address provided, the notice or rent is deemed received~~
40 ~~by the owner on the date posted, if the tenant can show proof of~~

1 mailing to the name and address provided by the owner), or the
2 number of an account in a financial institution into which the rental
3 payment may be made, and the name and street address of the
4 institution (provided that the institution is located within five miles
5 of the rental property), or if an electronic funds transfer procedure
6 has been previously established, that payment may be made
7 pursuant to that procedure, or possession of the property, shall
8 have been served upon him or her and if there is a subtenant in
9 actual occupation of the premises, also upon the subtenant.

10 The notice may be served at any time within one year after the
11 rent becomes due. In all cases of tenancy upon agricultural lands,
12 where the tenant has held over and retained possession for more
13 than 60 days after the expiration of the term without any demand
14 of possession or notice to quit by the landlord or the successor in
15 estate of his or her landlord, if applicable, he or she shall be deemed
16 to be holding by permission of the landlord or successor in estate
17 of his or her landlord, if applicable, and shall be entitled to hold
18 under the terms of the lease for another full year, and shall not be
19 guilty of an unlawful detainer during that year, and the holding
20 over for that period shall be taken and construed as a consent on
21 the part of a tenant to hold for another year.

22 3. When he or she continues in possession, in person or by
23 subtenant, after a neglect or failure to perform other conditions or
24 covenants of the lease or agreement under which the property is
25 held, including any covenant not to assign or sublet, than the one
26 for the payment of rent, and three days' notice, in writing, requiring
27 the performance of such conditions or covenants, or the possession
28 of the property, shall have been served upon him or her, and if
29 there is a subtenant in actual occupation of the premises, also, upon
30 the subtenant. Within three days after the service of the notice, the
31 tenant, or any subtenant in actual occupation of the premises, or
32 any mortgagee of the term, or other person interested in its
33 continuance, may perform the conditions or covenants of the lease
34 or pay the stipulated rent, as the case may be, and thereby save the
35 lease from forfeiture; provided, if the conditions and covenants of
36 the lease, violated by the lessee, cannot afterward be performed,
37 then no notice, as last prescribed herein, need be given to the lessee
38 or his or her subtenant, demanding the performance of the violated
39 conditions or covenants of the lease.

1 A tenant may take proceedings, similar to those prescribed in
2 this chapter, to obtain possession of the premises let to a subtenant
3 or held by a servant, employee, agent, or licensee, in case of his
4 or her unlawful detention of the premises underlet to him or her
5 or held by him or her.

6 ~~4. Any tenant, subtenant, or executor or administrator of his or~~
7 ~~her estate heretofore qualified and now acting, or hereafter to be~~
8 ~~qualified and act, assigning or subletting or committing waste upon~~
9 ~~the demised premises, contrary to the conditions or covenants of~~
10 ~~his or her lease, or maintaining, committing, or permitting the~~
11 ~~maintenance or commission of a nuisance upon the demised~~
12 ~~premises or using the premises for an unlawful purpose, thereby~~
13 ~~terminates the lease, and the landlord, or his or her successor in~~
14 ~~estate, shall upon service of three days' notice to quit upon the~~
15 ~~person or persons in possession, be entitled to restitution of~~
16 ~~possession of the demised premises under this chapter. For~~
17 ~~purposes of this subdivision, a person who commits an offense~~
18 ~~described in subdivision (c) of Section 3485 of the Civil Code, or~~
19 ~~subdivision (c) of Section 3486 of the Civil Code, or uses the~~
20 ~~premises to further the purpose of that offense shall be deemed to~~
21 ~~have committed a nuisance upon the premises.~~

22 ~~5. When he or she gives written notice as provided in Section~~
23 ~~1946 of the Civil Code of his or her intention to terminate the~~
24 ~~hiring of the real property, or makes a written offer to surrender~~
25 ~~which is accepted in writing by the landlord, but fails to deliver~~
26 ~~possession at the time specified in that written notice, without the~~
27 ~~permission of his or her landlord, or the successor in estate of the~~
28 ~~landlord, if applicable.~~

29 ~~As used in this section, tenant includes any person who hires~~
30 ~~real property except those persons whose occupancy is described~~
31 ~~in subdivision (b) of Section 1940 of the Civil Code.~~

32 ~~This section shall become operative on January 1, 2012.~~